Office-Supreme Court, U.S.
FILED
APR 8 1965
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 974

JAMES J. D'ELIA, JR.,
Petitioner

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD AND
RICHARD JOYCE SMITH,
WILLIAM J. KIRK, HARRY W. DORIGAN
AS TRUSTEES OF THE
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD,
Respondent

BRIEF OF THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD AND RICHARD JOYCE SMITH, WILLIAM J. KIRK, HARRY W. DORIGAN AS TRUSTEES OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THOMAS J. O'SULLIVAN,
Counsel for Respondent.

54 Meadow Street
New Haven, Connecticut

THE MACK CO., NORTH HAVEN, CONN.

In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 974

JAMES J. D'ELIA, JR.,
Petitioner

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD AND
RICHARD JOYCE SMITH,
WILLIAM J. KIRK, HARRY W. DORIGAN
AS TRUSTEES OF THE
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD,
Respondent

BRIEF OF THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD AND RICHARD JOYCE SMITH, WILLIAM J. KIRK, HARRY W. DORIGAN AS TRUSTEES OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported in 338 F(2) 701. The opinion of the United States District Court for the District of Connecticut is reported in 230 F. Supp. 912.

ARGUMENT

I.

THE PETITION WAS NOT TIMELY FILED.

Judgment was entered in the Court of Appeals on November 24, 1964. By 28 U.S.C.A. Section 2101(c), petitioner had 90 days after the entry of judgment within which to apply for a writ of certiorari. The petition was filed on March 11, 1965. The days which elapsed are as follows:

November	6
December	31
January	31
February	28
March	11
Total	107

The petition, therefore, was not timely filed.

II.

THE PETITION DOES NOT CONCERN ANY IMPORTANT QUESTION OF FEDERAL LAW.

Petitioner claims the hearing officer of the Railroad had bias and prejudice against him and the transcript of the hearing before this officer was used by the Adjustment Board. He claims, in brief, that he did not get a fair hearing before the Board and that he was thus denied due process.

The facts on the matter are set out in the Memorandum of Decision of the District Court. It pointed out (Appendix to Petition for Writ of Certiorari, p. 9a) "As the Board's award makes clear, the dispute was decided on the basis of facts largely admitted by plaintiff; and to the existence of *these* facts,

any possible prejudice of Pfister, manifested in the conduct of a subsequent hearing on behalf of defendant, would have no relevance."

The Circuit Court also said (Appendix, p. 2a) ". . . D'Elia has failed to show any particulars in which the transcript presented his case unfairly or in which he was harmed by the Board's use of the transcript."

Thus this case involves only a claim by petitioner that he was denied due process without any showing (in the complaint or by affidavit to the courts below) how he, in fact, was denied due process. This, certainly, is not a matter involving a question of federal law, let alone such an important question of federal law as to require that a writ of certiorari be granted.

CONCLUSION

The writ of certiorari should be denied.

Respectfully submitted,

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD AND RICHARD JOYCE SMITH, WILLIAM J. KIRK, HARRY W. DORIGAN AS TRUSTEES OF THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD.

By THOMAS J. O'SULLIVAN,
Their Attorney.